

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	
)	
2000 Biennial Regulatory Review)	
Spectrum Aggregation Limits)	WT Docket No. 01-14
For Commercial Mobile Radio Services)	
)	
Increasing Flexibility To Promote Access to)	
and the Efficient and Intensive Use of)	WT Docket No. 03-202
Spectrum and the Widespread Deployment of)	
Wireless Services, and To Facilitate Capital)	
Formation		

To: The Commission

**COMMENTS OF NEXTEL PARTNERS, INC.
ON NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

Nextel Partners, Inc. (“Nextel Partners”) operates a wireless system under the “Nextel” brand name serving secondary, tertiary and rural markets. Nextel Partners’ system includes more than 3,300 cell sites in 31 states, covers territory in which more than 37,000,000 people live, and currently serves more than 1,000,000 subscriber lines. Nextel Partners brings to its customers in rural and high cost areas the full range of digital wireless services available from Nextel Communications, Inc. (“Nextel”) in urban areas. Because of its primary focus on rural and smaller markets, Nextel Partners has a strong interest in this proceeding.

Nextel Partners supports the Commission’s efforts to facilitate the development of wireless systems in rural and high cost areas, and agrees with the Commission’s statements that the development of rural wireless systems is necessary “to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest.”¹ The Commission should make a specific public interest finding with regard to developing rural wireless systems in order to better facilitate achieving this goal. Such a finding will provide a clear signal to carriers and the public of the need to develop rural wireless systems, and will serve as guidance to federal and state regulators in making decisions on such matters as approving Universal Service Fund support for wireless carriers in order to help facilitate meeting the Commission’s goals.

The primary consideration in building and maintaining a wireless system in rural areas is cost — the expenditures for construction and maintenance of a system must be justified by the potential economic recovery generated by providing service to customers

¹ NPRM at ¶ 8.

in a given area; otherwise a system is not sustainable. For this reason, the Commission can best achieve its goals by implementing policies and rule changes that help to reduce costs. This can be done by (i) facilitating easier access to capital; (ii) promoting support of wireless systems through the existing Universal Service Fund mechanisms; and (iii) lowering the potential cost of regulatory burdens. In addition, eliminating barriers to development of a secondary market will help to promote and facilitate efficient use of spectrum, which in turn will promote development of rural wireless systems.

Nextel Partners believes that the Commission should act to provide incentives to carriers operating in rural areas, rather than penalizing existing carriers that are working to develop and operate rural systems. In particular, in situations where a carrier that purchased spectrum at auction and has met all applicable construction deadlines, the Commission should not reclaim spectrum on the basis that it is “unused.” Such a rule change would serve to frustrate investor and lender expectations and raise costs to carriers without any concomitant guarantee that such reclaimed spectrum would be used for bring wireless service to rural areas. Instead, the Commission should allow market mechanisms to achieve efficient use of spectrum by facilitating development of secondary markets.

Similarly, Nextel Partners does not believe that existing technical service rules are a significant impediment to the build-out of rural service territory. Thus, changing power limitations or geographic area size will not do as much to achieve the Commission’s objectives as will the steps outlined above. Nextel Partners suggests that any technical changes be carefully considered within the context of the on-going “Federal Rural Wireless Outreach Initiative.”

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**COMMENTS OF NEXTEL PARTNERS, INC.
ON NOTICE OF PROPOSED RULEMAKING**

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby files these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.² As a wireless carrier dedicated to providing service to rural and underdeveloped areas, Nextel Partners strongly applauds the Commission’s efforts to facilitate and speed the development of wireless mobile services to rural areas of the country. In support of this goal, Nextel Partners urges the Commission to adopt policies

² *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, WT Docket No. 02-381; *2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14; *Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation*, WT Docket No. 03-202, Notice of Proposed Rulemaking, released October 6, 2003 (“Notice” or “NPRM”).

that will facilitate access to capital and provide other regulatory incentives that will allow mobile wireless carriers to maintain and increase their provision of service to rural areas. Commission policies should promote the availability of capital in private markets and by means of public funding sources – such as the Universal Service Fund and the U. S. Department of Agriculture’s RUS program – for build out and operation of mobile wireless infrastructure in rural areas.

BACKGROUND

Nextel Partners’ primary focus is to provide digital wireless mobile communication services in mid-sized and smaller markets, including historically underserved and rural markets throughout the United States. Nextel Partners has grown from its inception in 1999, when Nextel Partners served fewer than 50,000 customers in a small number of markets, and today serves over one million customers in 31 states. Nextel Partners today operates more than 3,300 cell sites and its system covers more than 37,000,000 POPs.

Through its cooperative arrangements with Nextel Communications, Inc. (“Nextel”), Nextel Partners brings to its customers in high cost rural areas and smaller markets the same national network and the same fully integrated four-in-one bundle of services available from Nextel in urban areas. These services include (i) digital cellular, (ii) text/numeric messaging, (iii) Nextel Wireless Web services and (iv) Nextel Direct Connect digital two-way radio in a single phone. Nextel Partners provides these advanced digital wireless communications services over an industry leading 2.5G nationwide network. In addition to serving the residents of rural and secondary market

areas, Nextel Partners provides mobile services to travelers in corridors along interstate and state highways.

Along with Nextel, Nextel Partners has also established strong ties with the Public Safety community to help meet the nation's emergency, public safety and national security needs. The combined Nextel/Nextel Partners system provides service to many police and fire departments and other first responders across the nation.

In light of its focus on rural markets, Nextel Partners has a keen interest in developments in this proceeding.

INTRODUCTION

As the Commission noted in the NPRM, “[i]n our highly mobile and increasingly untethered world, consumers value wireless services that offer ubiquitous and seamless coverage in a reliable manner.”³ Nextel Partners believes that the proliferation of reliable, ubiquitous mobile wireless voice services in rural areas, including underserved and unserved areas, is of principal importance and must be prioritized accordingly. In particular, the Commission must in the first instance ensure the competitive provision of Universal Service Fund supported services in rural areas of the country by streamlining the process of designating competitive eligible telecommunications carriers (“ETCs”) at the federal level.

Nextel Partners agrees with the Commission's finding that the “continued development and operation of quality wireless facilities” is a “critical” national priority⁴ and fully supports the Commission's goal of facilitating wireless services in rural areas

³ NPRM at ¶ 2.

⁴ NPRM at ¶ 2.

“to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest.”⁵ Nextel Partners urges the Commission specifically to recognize in its final order in this proceeding that mobility in rural areas is not only important for everyday use but is *critical* for public safety, emergency and homeland security needs. The Commission should use this proceeding to declare in unequivocal terms that the public interest is served by the expansion of competitive mobile wireless services to the rural areas of the nation. Guided by this fundamental principle, the Commission should fashion rules and policies to facilitate the expansion of mobile services throughout rural America.

In order to reach this goal of expanded mobile wireless services to rural areas, the Commission should promote marketplace incentives. Most importantly, the Commission should facilitate access to capital in private markets as well as through public funding. Where appropriate, the Commission should further adopt flexible technical rules to encourage build out and operation of mobile wireless services in the rural areas. However, new flexibility rules should not be adopted that would have the effect of undermining existing mobile services. For example, authorizing increased power levels in an attempt to expand existing coverage further into unserved and underserved areas could create unintended interference problems for existing services. On the other hand, relaxation of other technical rules, such as tower construction guidelines, could be beneficial and without any negative consequences. To strike the proper balance in the technical flexibility rules and policies adopted by the Commission, Nextel Partners

⁵ NPRM at ¶ 8

suggests that these issues be carefully considered within the context of the on-going “Federal Rural Wireless Outreach Initiative.”⁶

If the rural consumer is to be accorded access to wireless telecommunications services reasonably comparable to those enjoyed by the urban consumer, the most direct path to such parity is to expand existing wireless networks into rural areas. Nextel Partners believes that the Commission should focus its efforts on crafting rules that encourage existing wireless mobile carriers to expand their networks into rural areas. The Commission should adopt policies that will support carriers in these endeavors.

In particular, where a carrier that purchased spectrum at auction has met or exceeded applicable construction requirements, the Commission should not penalize the carrier by reclaiming “unused” spectrum. Such a change would negatively impact investor and/or lender expectations and could impose significant costs on carriers that bought their spectrum at auction while doing little or nothing to ensure that the goal of rural build-out will be achieved. Existing construction requirements are not a significant obstacle to construction and maintenance of wireless systems in high cost rural areas, even though a licensee may plan the build-out of its system in a way that allows meeting construction requirements. Economic concerns are the controlling factor. For this reason, allowing marketplace mechanisms to function in determining the most efficient uses for spectrum can play a significant role in fostering development of rural wireless infrastructure. Nextel Partners therefore supports elimination of barriers to the development of secondary markets as a preferred means to accomplishing this goal.

⁶ See News Release, “FCC and USDA Hold Kick-Off Meeting of The Federal Wireless Outreach Initiative,” released July 2, 2003.

Similarly, Nextel Partners does not believe that existing system technical requirements are a significant factor in controlling the cost of rural wireless system build-out and maintenance. While Nextel Partners generally supports the adoption of flexible service and technical rules, such as the easing of unnecessarily burdensome tower construction rules, the Commission should not adopt technical rules that will undermine the present regulatory scheme in which mobile wireless carriers currently provide service in rural areas. Relaxing power limits and changing the size of geographic licensed areas will not have as much potential impact on promoting rural system development as will facilitating easier access to capital, supporting wireless systems through the Universal Service Fund, and generally lowering the cost of regulatory burdens.

Finally, Nextel Partners believes that some patience is in order to allow the marketplace sufficient time to react to Commission initiatives, and fashion competitive solutions to achieve rural service objectives. In particular, eliminating barriers to the development of secondary markets in spectrum will help to promote efficient use of spectrum, and thereby enhance the prospect of rural system development. The Commission's recent policy changes promulgated in WT Docket No. 00-230 should be allowed time to take effect.

I. The Commission Should Declare A Fundamental Principle That Expansion Of Mobile Wireless Service in Rural Areas Is In The Public Interest.

Nextel Partners believes that the Commission should clearly declare in this rulemaking that the expansion of competitive mobile wireless services to rural areas of the nation is in the public interest. As a mobile wireless carrier whose primary function is to serve rural and secondary markets, Nextel Partners understands the importance of this service to both residents and travelers in these regions. Mobile telecommunications

services are an essential and integral part of everyday life for citizens living in urban areas. Citizens of rural areas should have access to these same services that have brought so much benefit to residents in urban areas. Rural residents are not second-class citizens and the public interest demands that they not be treated as such. The Commission should take this opportunity to make a clear public interest pronouncement to this effect.

Wireless carriers such as Nextel Partners add the critical element of mobility to the provision of rural telecommunications services, a valuable option that incumbent wireline LECs cannot match. This essential difference is particularly beneficial to consumers in rural areas, including those traveling on remote roads and highways, where wireline telephones are more widely-spaced than in concentrated urban areas. It is Nextel Partners' experience that the mobile communications needs of rural users arise not only through everyday use but also as emergency communications, including E911 calls. Indeed, following the events of 9/11, efficient and effective mobile communications in all areas of the country, including the rural areas, is a matter of national security. With this overall policy goal of assuring mobile wireless services to the rural areas of the country in mind the Commission should adopt specific rules and policies to expand and promote operations of wireless services in these areas.

An unequivocal pronouncement by the Commission in this proceeding that the provision of competitive mobile wireless services to rural areas is presumed to be in the public interest would help to encourage rural market entry and expansion by existing wireless carriers. Moreover, it would provide guidance to public utility commissions in making ETC determinations that can greatly expand service to rural consumers.

II. The Commission Should Adopt Policies To Facilitate Access To Capital To Expedite The Build Out Of Rural Areas.

As the Commission recognizes, there are “inherent economic challenges of providing telecommunications services in sparsely populated, expansive rural areas.”⁷ As geographic areas become less and less densely populated, the economic “break even” point for new cell site construction and for post-construction operation and maintenance of cell sites becomes more and more difficult for mobile wireless carriers to meet. As a result, on-going operations of wireless service in some rural areas can be difficult to support based on market economies. Commission policies should be devised to address this reality and create marketplace incentives for wireless carriers to expand into and serve areas that cannot otherwise be covered by reliance on pure market forces alone. Commission policies should facilitate access to capital in both private markets and through public funding to achieve this goal.

The Commission acknowledges that facilitating the flow of capital could encourage the growth of wireless service in rural areas and seeks to explore ways to accomplish this goal.⁸ Remarkably, however, although the Universal Service Fund (“USF”) is an available funding source to expand mobile wireless services in the rural areas, the Commission has failed to take full advantage of the USF for this purpose. As an initial step towards expanding mobile wireless services in rural regions, the Commission should move expeditiously to make available funding through the USF to mobile wireless carriers that seek to serve as Eligible Telecommunications Carriers (“ETCs”) in rural areas. Nextel Partners currently has seven such ETC petitions pending

⁷ NPRM at ¶ 4.

⁸ NPRM at ¶ 72.

before the Commission, and has several other ETC petitions pending before state public utility commissions. Although Commission guidelines call for action on these petitions within a six-month time period, because of opposition from incumbent LECs, the processing of these petitions has been unnecessarily stalled. And this has happened even though the service offered by Nextel Partners is a *complement* to traditional wireline service, rather than merely a competitor. The time for Commission action on these petitions is now. Support for expansion of rural mobile networks is immediately available and further delay in facilitating that funding is contrary to the specific policy objectives being advanced by the Commission in this proceeding.

The Commission points to the U. S. Department of Agriculture's Rural Utilities Service ("RUS") program as a potential source of funding and asks what, if any, regulatory or policy changes should be made to complement that program.⁹ Nextel Partners believes that with appropriate clarification and specific directives, this program could serve as a useful funding source in the development of wireless mobile services in the rural markets.

The RUS program is essentially the modern day manifestation of the Depression-era Rural Electrification Administration, which was constituted to string electric wires to rural farmsteads. As a result, historically it has been principally focused on wireline issues rather than wireless issues. Nevertheless, Nextel Partners believes that the partnership that the Wireless Telecommunications Bureau ("WTB") has recently formed with RUS can and should be used to craft rules and policies that lead to the expansion of rural mobile wireless services.

⁹ NPRM at ¶ 72.

Rules, policies and, if necessary, legislative changes should be implemented to authorize the RUS program to allow for a range of grants and loans at below market rates to wireless carriers for the provision of a wide array of narrowband as well as broadband mobile wireless services. RUS programs should not be unnecessarily restricted to deny funding to important mobile wireless services, such as Nextel Partners' state-of-the-art push-to-talk Direct Connect service that can play a vital role in everyday as well as emergency communications. As currently structured, some programs are too restrictive. For example, RUS has a "broadband program" that is open to both wireline and wireless companies, providing low-cost, subsidized government loans to encourage the provision of broadband services to rural areas.¹⁰ However, to qualify for these low-interest government-subsidized loans, a provider must provide services at a minimum of 200 kb/sec duplex, and must serve communities that are (i) under 20,000 in population and (ii) not part of an SMSA. The restrictions of this program deny funding to narrowband mobile services that could play a vital role in the wireless telecommunications infrastructure of rural areas. Moreover, by restricting subsidized loans to broadband services, the RUS essentially "puts the cart before the horse" by focusing on the proliferation of broadband services in rural areas before achieving parity in voice and other narrowband wireless services throughout the country.

Nextel Partners urges the Commission to work with the USDA, and other government agencies, through the recently formed "Federal Rural Wireless Initiative"¹¹ to develop a range of grant and loan programs to assist carriers in the provision of mobile wireless services to rural areas. Programs should be developed not just to assist in the

¹⁰ NPRM at ¶ 75.

¹¹ See note 4 herein.

initial construction of mobile wireless systems but also in the continued operation of systems in areas that might not otherwise be economically justified by marketplace forces. Mobility in rural areas should be recognized as a high priority within this forum and rules, policies and even legislative changes, if necessary, should be advanced to meet this goal. It should be kept in mind that wireless services may in many cases be the best alternative for serving certain unserved and underserved rural areas, where provision of wireline telecommunications is uneconomic or impractical.

By making funding available in this manner the “break even” point of build out construction for wireless carriers could be significantly lowered and expansion of mobile wireless service will be fostered in less densely populated regions.

The Commission further asks whether RUS should be allowed to take security interests in the FCC radio licenses of their borrowers.¹² Under this proposal, licensees in rural areas would pledge their licenses to RUS as collateral in exchange for securing capital on favorable terms.¹³ The Commission proposes to limit this process only to funding obtained from RUS.¹⁴

While Nextel Partners generally supports such a collateral process that could lead to favorable funding, it urges the Commission to make clear that a license cannot be transferred to a lender or any other third party, including a trustee, without a Commission hearing pursuant to the requirements of Section 310(d) of the Act. Moreover, Nextel Partners believes that, if the Commission does allow RUS to take a security interest in a wireless license, RUS should not require such a security interest as a minimum threshold

¹² NPRM at ¶ 80.

¹³ NPRM at ¶ 80.

¹⁴ NPRM at ¶ 86.

requirement to its loan programs, but only as one of several alternative options to secure the loan obligation. This would allow the carrier flexibility in structuring its financing without deterring other, private lenders whose perceived ability to secure their loans might be adversely affected by RUS' priority as a creditor in the license itself. The Commission should also consider allowing wireless carriers to provide a security interest in their licenses to private lenders in exchange for financing. Assuming *arguendo* the legality of such an approach, it could be beneficial for mobile wireless carriers to have the option of providing a security interest in their licenses in exchange for below market financing for rural expansion and operation. Likewise, the Commission should promote other policies that will encourage private lenders to advance funding for rural mobile wireless operations. These policies could include government loan guarantee programs to reduce risk, tax relief for the lenders, and other economic and regulatory incentives.

All such economic and regulatory incentive policies should be fully explored in the Federal Rural Wireless Outreach Initiative. For this reason, Nextel Partners supports the Commission's suggestion that non-governmental entities be included and allowed to participate in the group's meetings.¹⁵ Through such participation, the Rural Outreach Initiative has great potential of truly being a government-industry-partnership for the development of mobile wireless services in the rural areas of the nation.

¹⁵ NPRM at ¶ 77.

III. The Commission Should Adopt Flexible Technical And Service Rules To Facilitate Expanded Service In Rural Areas That Do Not Undermine Existing Mobile Wireless Services In Rural Areas.

Nextel Partners applauds the Commission's efforts to eliminate unnecessary regulatory barriers to the deployment of spectrum-based services in rural areas.¹⁶ Allowing carriers increased flexibility in providing mobile wireless service in the rural areas could lead to increased efficiencies and ultimately to lower costs in providing services in those areas. However, in adopting flexible technical and service rules, the Commission should be careful not to adopt rules that would undermine the existing regulatory scheme under which mobile wireless carriers currently provide service in rural areas.

Nextel Partners believes that issues relating to proposed technical flexibility rules and policies should be carefully considered within the context of the on-going Federal Rural Wireless Outreach Initiative. Based on government and industry participation in this forum, technical and service recommendations should then be provided to the Commission. Below Nextel Partners comments on some of the specific "flexibility" rules currently suggested by the Commission.

1. Definition of "rural areas"

The NPRM notes that federal regulations employ numerous definitions of the term "rural" in various different contexts, and asks whether creating a standard definition for all purposes is warranted. Changes in the definition of "rural area," and/or the rationalization of the differing definitions presently used in various regulations may have unforeseen indirect consequences that have not been fully explored in the Notice,

¹⁶ NPRM at ¶ 9.

including the possible gerrymandering of service areas in a way that could exclude or significantly alter who is or who is not considered a “rural” provider. On the other hand, there is no overriding purpose that will be served by standardizing the existing definition and therefore, unless such a radical change can be shown to be necessary, Nextel Partners favors leaving the existing definitions as they are.

The Notice notes that Dobson Communications has commented that, “as the CMRS industry has matured, competition in rural areas has developed sufficiently to make meaningless any competitive distinction between urban and rural areas.”¹⁷ Nextel Partners strongly disagrees with Dobson Communications’ suggestion. Indeed, Nextel Partners’ very existence is based fundamentally on the tenet that even though citizens in rural areas need, desire and benefit from access to the same array of advanced digital mobile services that Nextel provides in the larger urban areas, the market mechanisms affecting the ability of a carrier to finance, build and maintain such a system in rural areas function differently than they do for urban markets. Simply put, there are different costs, challenges, and benefits to serving rural, as opposed to urban areas. In some cases, federal support mechanisms alter both the economics of service to those areas and the extent of a carrier’s obligations to serve.

2. Reclamation of “Unused” Spectrum

The Commission poses the question, “what constitutes the ‘use’ of spectrum” for purposes of rural service provision,” and inquires concerning how best to reclaim spectrum that is not being “used” in accordance with any definition ultimately adopted. As the Commission points out in the Notice, there are a variety of ways that the

¹⁷ NPRM at ¶ 11.

Commission presently regulates the “use” of spectrum, and its “recapture” in the event the spectrum is deemed to be insufficiently used, and these rules vary according to the type of service that is being provided. With regard to existing services, Nextel Partners supports maintaining the existing rules for identifying and reclaiming “unused” spectrum. This is true particularly in the case of auctioned spectrum where those rules were taken into account and relied upon in bidding for the spectrum.

Even where such “unused” spectrum is reclaimed, there is no assurance that another provider can be found by the FCC that will be able to make more efficient use of the spectrum. The better approach is to allow market forces to determine the use of spectrum through leasing and other mechanisms. The recent issuance of the Commission’s Secondary Markets Report and Order in WT Docket No. 00-230, pursuant to which the Commission has indicated that various types of leasing arrangements will be allowed, may well have the effect of opening new avenues for facilitating the use of “unused” spectrum without the necessity of any sweeping changes to the existing rule structure for the various different services. Because the policy change to allow spectrum leasing is so new, Nextel Partners believes that more time is needed to determine the effects of leasing in practice, before making other changes to existing rules. One issue that the Commission should make clear is that construction and “use” requirements can be satisfied in whole or in part through a lease arrangement.

While the reclamation of “unused” spectrum certainly has its place in the regulatory regime, the Commission should also focus on facilitating the use of spectrum in rural areas through deployment of economic and regulatory incentives that would benefit a carrier if it provided rural service. One possibility for doing so is streamlining

the Eligible Telecommunications Carrier (“ETC”) process to encourage carriers to apply for support to serve high cost, rural and insular areas. Also, streamlining regulatory hurdles generally for deployment of tower sites in rural and smaller markets could substantially reduce the cost of tower construction and hence would facilitate the process of building out additional unserved territory.

3. Substantial Service Benchmarks and Safe Harbor

The Commission asks whether and how specific performance requirements and construction benchmarks should be imposed on carriers to encourage provision of service to rural areas. For example, the Commission asks how it should be determined that a carrier has provided “substantial service” to rural areas, and whether the definition of “substantial service” should be expanded to provide alternatives to the existing construction benchmarks in certain services. The Commission is concerned that current population or geographic area based benchmarks for construction “may impinge upon licensees’ ability to serve niche or less populated areas, and may unintentionally discourage construction in rural areas.”¹⁸ The Commission proposes various modifications to construction requirements to promote flexibility for licensees so that licensees will be able to have additional alternatives for claiming they provide “substantial service” as a means of complying with construction requirements.

Nextel Partners agrees that the need to meet a construction benchmark is a factor that a licensee must take into account in planning and carrying out system construction.

¹⁸ Notice at ¶ 36.

Therefore, Nextel Partners supports the flexible approach to meeting construction benchmarks currently included in the rules.¹⁹

Nextel Partners does not believe that applicable construction benchmarks are a major impediment to system construction in less populated areas. Market mechanisms and financial considerations are the driving forces that determine when and where cell sites will be constructed. The substantial service option does nothing to eliminate the “economic” component of system planning. The financial incentives already discussed above have greater potential for directly changing the “break even” point for system build out and operation in rural areas in a way that will facilitate the Commission’s objectives in the instant rulemaking. In this regard, Nextel Partners urges the Commission to process Nextel Partners’ pending ETC designation applications without further delay. In addition, the Commission should explore implementing ways of reducing the cost of tower construction and operation—at least the “regulatory” component of such cost—in the rural areas.

4. Renewal License Terms

The Commission requests comments on whether additional performance requirements should be imposed on renewal license terms subsequent to the initial term. The question is whether such additional performance terms might encourage entry into rural areas. Since Nextel Partners is already focused on the tertiary, rural and insular markets, however, the addition of performance requirements past the initial license term would not be likely to encourage additional rural entry. Moreover, to the extent that a

¹⁹ With regard to the upper 200 channel 800 MHz economic area SMR blocks, the three and five year benchmarks have passed, and changes with regard to those benchmarks will have little or no impact.

wireless carrier such as Nextel Partners is an ETC that serves rural telephone company service areas, the addition of performance requirements past the initial term of the license would seem especially redundant. The additional universal service obligations assumed by ETCs in a rural area, along with the federal subsidies supporting the carrier's incursion into such areas virtually ensures that the Commission's objectives with regard to rural service provision will be addressed. Accordingly, at least for ETCs serving rural areas, this does not appear to be necessary.

But even for non-ETCs, it is not necessarily an economically feasible approach. Instead of threatening the carrier with the choice of making non-economic investments or facing loss of its license, or of a portion of its spectrum, or geographic market, the Commission should be concerning itself with additional initiatives to encourage rural entry, such as streamlining the ETC process, and/or redesigning universal service contributions to take into account rural service provision by discounting a rural service provider's obligation. The Commission should not attempt to force carriers to enter rural areas that are uneconomic, but rather should attempt to modify the economics of the market entry to make it in the carrier's interest to provide service there. Changing the rules now to *mandate* uneconomic investments will only serve to diminish shareholder value in investments made in auctioned spectrum based on existing rules. Moreover, such a tactic could eliminate long range benefits from the Commission's positive steps taken to foster development of a secondary market in spectrum. Again, the key to fostering system deployment in the most rural areas is to find ways to lower the cost of deployment and operation in such areas, either through financial incentives or reducing

the purely “regulatory” costs, and by giving market forces the opportunity to impact more greatly the deployment and use of licensed spectrum in those areas.

5. Relaxed Power Limits

The Commission seeks comment on whether the relaxation of base station and/or handset power limits could encourage better coverage of rural areas. For example, the Notice notes that transmitters could transmit at a higher power level, or an antenna could be directionalized to direct a higher signal to a less densely populated portion of a carrier’s territory. As the Commission itself observes, however, in the case of mobile voice services, both the base station and the handset would need to have higher power to realize an appreciable difference in rural areas – and this can create a number of difficulties, such as interference, or problems with use of a high-powered handset in urban areas where lower-powered handsets are employed.

As a general rule, Nextel Partners does not currently operate its stations at the maximum allowable power limits under existing rules, and does not believe therefore that raising these limits would have any appreciable favorable effects on facilitating rural system development. Higher power limits result in greater potential interference, less potential for re-use of spectrum in adjacent or nearby areas, and, for higher-powered handsets, systematic problems that may arise when such handsets are transported to an urban environment.

6. Appropriate Size of Geographic Service Areas

The Commission notes the variance in geographic service areas served by licensees in different services under the current regulatory scheme, *e.g.*, PCS, Cellular, SMR, and questions whether they can be rationalized. It is not clear to Nextel Partners

that the various different types and sizes of service areas among the various services need to be rationalized. In fact, the availability of an array of options in this context serves to allow for maximum variability in system deployment, which in turn allows market mechanisms freedom to function in achieving maximum service efficiencies. With regard to the 800 MHz SMR service, Nextel Partners has benefited from the applicable EA license partitioning rules, pursuant to which Nextel Partners has obtained partitioned EA licenses. Rather than seeking to rationalize the different services, simply allowing geographic area partitioning may serve the purposes of the Commission without forcing changes that may have far reaching consequences. Similarly, Nextel Partners believes that leasing of EA licensed spectrum should be allowed on a partial EA basis.

**7. Rural Radiotelephone Service and Basic Exchange
Telecommunications Radio Service**

The Commission requests comment on the future of these two services, which are mostly in place in Alaska and the far west regions of the United States. These services are largely outdated and in some cases could profitably be replaced by wireless mobile carriers. CMRS service is a direct replacement for RRS, and BETRS is a fixed radiotelephone service that offers few advantages, except as a direct replacement for wireline services where it is infeasible to string wires or lay cable. There are some extremely remote markets in which these two services provide a valuable service, but Nextel Partners does not agree that they should be expanded to rural areas of Mississippi and other states. It is neither efficient nor beneficial to encourage outdated technologies when newer, more innovative technologies could be implemented by the application of regulatory and economic incentives from the government. The Commission should instead seek to find economic means to provide the target populations of RRS and

BETRS with up to date mobile wireless services. This may not be possible in every case, but the first attempt should be to bring even remote users the benefits of modern services rather than encouraging them to accept obsolete technologies.

CONCLUSION

In view of the foregoing, Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

NEXTEL PARTNERS, INC.

By: ---Signed---

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